

APPEAL NO. 040200
FILED MARCH 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 16, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appeals, contending that the hearing officer erred in finding in favor of the claimant on the good faith and direct result criteria for SIBs entitlement. The claimant asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in dispute are whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter, and whether the claimant earned less than 80% of his average weekly wage as a direct result of the impairment from the compensable injury during the qualifying period for the fifth quarter. The hearing officer found that the claimant did satisfy the good faith and direct result criteria for SIBs during the qualifying period for the fifth quarter. Conflicting evidence was presented at the CCH on the good faith and direct result requirements for SIBs entitlement. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's findings that the claimant met the good faith and direct result criteria for SIBs entitlement during the qualifying period for the fifth quarter and her decision that the claimant is entitled to SIBs for the fifth quarter are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge